SUPREME COURT U. S.

FILED
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. 978

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, and MACKEY AIRLINES, INC., MASTER EXECUTIVE COUNCIL NO. 103, AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,
Petitioners,

vs.

ROBERT C. TISCHLER,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioners, Air Line Pilots Association, International, and Mackey Airlines, Inc., Master Executive Council No. 103, Air Line Pilots Association, International, by their undersigned attorney, Wyatt Johnson, pray that a Writ of Certiorari issue to review the judgments of the United States Court of Appeals for the Fifth Circuit entered in the above case on October 28, 1968.

OPINIONS BELOW

The opinion of the United States District Court, Southern District of Florida, is contained in three (3) orders entitled respectively "Findings of Fact and Conclusions of Law", "Judgment for Plaintiff" and "Order". The Findings of Fact and Conclusions of Law and Judgment for Plaintiff are unreported.

The United States Court of Appeals for the Fifth Circuit rendered four (4) orders herein: a three (3) line Per Curiam affirmance of the District Court, a two (2) line denial of a rehearing, a Judgment and a three (3) line denial of a motion by the respondent for an additional allowance of the sum of $4,111.93 as attorneys' fees for the handling of the appeal from the District Court. The Per Curiam affirmance of the District Court is reported at __ F.2d __ (not reported as of this date).

Copies of all of the foregoing are appended hereto in accordance with Rule 23(1)(i).

JURISDICTION

The judgments of the Court of Appeals for the Fifth Circuit were made and entered on October 28, 1968, November 22, 1968, December 5, 1968, and December 11, 1968, and copies thereof are appended to this petition in the Appendix at pp. 20, 21, 22, 23-24. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

The respondent, an airline pilot, filed a suit to require his collective bargaining representative under the Railway Labor Act, the petitioner, Air Line Pilots Association, International, through its Mackey Airlines Master Executive Council No. 103 (presently non-existent), to establish for the respondent a different and earlier date of hire than that assigned to him by the petitioner. The respondent was successful in his litigation and, in fact, did obtain the desired earlier date of hire. He then sought and obtained from the District Court an award of attorneys' fees. The sole question presented here is whether the District Court properly exercised its equity powers in making the award of counsel fees to the respondent.

STATUTES, FEDERAL RULES AND REGULATIONS INVOLVED

There are no statutes or Federal rules and regulations here involved since the only basis for the award of counsel fees to the respondent is the general equity powers of the court.

STATEMENT

The respondent sued the petitioners, Air Line Pilots Association, International, and Mackey Airlines, Inc., Master Executive Council No. 103, Air Line Pilots Association, International, seeking an Injunction and Other Relief (Complaint, R. 1-15 and amendments, R. 16-17 and R. 21-22). Hereinbelow, the petitioners will be referred to as ALPA and the Mackey MEC.

This appeal involves only the question of an award of attorneys' fees to counsel for the respondent. However, it is necessary to describe the relationship of the parties and the manner in which the parties and the trial court dealt with and disposed of the principle subject of the litigation. The relationship of the parties and the general nature of the respondent's claim is set forth in paragraph I. of the Complaint (R. 1-2) as follows:

> "This is a complaint asking for a temporary injunction, after notice, pending full hearing. In effect, it states that plaintiff is a pilot of Mackey Airlines, Inc. (herein Mackey) and has been since October 1, 1946. The Mackey pilots are and have been represented by the Airline Pilots Association, International (herein ALPA) Master Executive Council #103 (herein Mackey MEC), although plaintiff is not a member thereof. Mackey merged with Eastern Airlines, Inc. (herein Eastern) on January 8, 1967, with Eastern the surviving carrier. In anticipation of the merger, the Mackey MEC certified to ALPA Master Executive Council #108 (herein Eastern MEC), the bargaining representative of the Eastern pilots, a seniority list purporting to verify plaintiff's length of service, but upon which plaintiff's date of hire and seniority date were given as September 1, 1952. Plaintiff timely protested the erroneous 1952 date and presented evidence to the Mackey MEC including evidence requested by the Mackey MEC. Nevertheless the Mackey MEC declined to correct the error and to consider the evidence requested, and merger negotiations are continuing to the pres-

> ent, using an erroneous 1952 seniority date relating to plaintiff as the basis thereof. Plaintiff requested a hearing and an opportunity to meet the issues, but this was denied. Plaintiff contends that in so acting, ALPA and the Mackey MEC are unlawfully discriminating against him in violation of their statutory duty of fair representation.

Thus, it appears that ALPA, prior to the merger of Eastern and Mackey, was the collective bargaining representative for both the Eastern and Mackey pilots; that after the merger ALPA was the collective bargaining representative for the pilots of Eastern, the surviving carrier; that the respondent was a Mackey pilot represented by ALPA, although not a member of ALPA; that the respondent was dissatisfied with the date of hire and seniority date of September 1, 1952, and believed such date should have been October 1, 1946; and that the purpose of the suit was to force the Mackey MEC to correct such date in preparing a Mackey pilots' seniority list in anticipation of the merger.

Pursuant to Order (R. 17-18) of the trial court, the Mackey MEC merger committee changed the respondent's date of hire and seniority date from September 1, 1952, to October 1, 1946, as sought by the respondent. Another Order (R. 22-24), by agreement of counsel for the parties (R. 24), completely settled the case with the sole exception of the respondent's claim for attorneys' fees. To this latter point, ALPA (the Mackey MEC has long since ceased to exist, R. 159-160) directed a response (R. 24-27) denying therein any liability for the payment of fees to counsel for the respondent.

At this point, prior to the filing of the respondent's Motion for Summary Judgment (R. 123-124) on July 5, 1967, there was conducted before Arbitrator David Cole proceedings relative to the merging of the Eastern and Mackey pilots' seniority lists. As a result of these proceedings, the following facts were established:

1. At all times involved, the respondent was the number one pilot on the Mackey seniority list and this was irrespective to any date of hire or seniority date claimed by him, assigned to him or ultimately used for him by Arbitrator Cole (R. 244).

2. The "cumulative service date" (equivalent to seniority date, date of hire, etc.) assigned by Arbitrator Cole to the respondent was not October 1, 1946, as desired by the respondent but March 9, 1952, an advancement by Mr. Cole of five (5) months and twenty-two (22) days from the date of September 1, 1952, the date originally assigned to the respondent by the Mackey MEC merger committee (R. 222, 246, 247).

3. At all times here involved, the number two pilot on the Mackey seniority list had a seniority date later than the respondent's (R. 245).

4. In the Cole Arbitration proceedings, based on the respondent's claimed seniority date of October 1, 1946, his proposed position would have been No. 432. However, by reason of the date used, March 9, 1952, by the Cole panel, he actually emerged as No. 894 on the merged seniority list, a position still ahead of all of the other Mackey pilots (R. 244, 245).

5. The Cole arbitration panel actually used a method of determining the manner of merging the Eastern and Mackey seniority lists different from the method proposed by the Mackey pilots which method was based on the October 1, 1946, date claimed by the respondent (R. 274).

Subsequent to the arbitration proceedings and after the Eastern and Mackey seniority lists were merged, the respondent filed a Motion for Summary Judgment for counsel fees (R. 123-124), attaching thereto a supporting memorandum (R. 151-159). The cases cited by the respondent in the memorandum were based upon one or both of two circumstances: (1) the right to counsel fees where a plaintiff objects to discriminatory and oppressive conduct or abuse by a labor organization; and (2) the right to counsel fees where a plaintiff obtains relief applying to a class of individuals.

ALPA filed a memorandum of law (R. 159-164) opposing the Motion for Summary Judgment, relying therein upon two points: (1) there is no allegation in the Complaint and no proof of discriminatory and oppressive conduct or abuse of the respondent by the petitioners; and (2) the respondent did not obtain any relief applying to a class of individuals as set forth by the five facts set forth hereinabove (all of said individuals were behind the respondent on the list and were not advanced by reason of his suit).

The trial court denied the Motion for Summary Judgment (R. 168), and the cause thereafter came on for trial (R. 219-269). At the conclusion of the evidence the Court ordered the petitioners to pay to the respondent for counsel fees the sum of Four Thousand Three Hundred One

Dollars ($4,301.00) with interest thereon at the rate of six per cent (6%) (R. 204), stating as follows (R. 268-269):

> "I am going to award the amount that they asked. I am not criticizing ALPA, but I was impressed throughout this case that there was a dilemma that couldn't be solved by ALPA, and that the merging companies, apparently, were reluctant to solve the dilemma with any speed. And I do believe that the testimony of Mr. Tischler to the effect that the Mackey Group and perhaps the union, themselves, wanted the court decision in the matter.
>
> "It is true that the Court's decision is not what they hoped precisely wanted. That is, the Court referred it to the Arbitration Board and they didn't come out exactly as they hoped, but serving for the entirety, regardless of whether or not the intended gain was fully achieved or not. In other words, the lawyer is entitled to be paid even if he loses. He didn't lose in this case, but he certainly didn't win.
>
> "So draw up your findings of fact and conclusions of law along that line and that's that.
>
> "Mr. Brucker: May it please the Court, may we insert what we hope we can agree with Mr. Johnson will be a reasonable amount for today's services, which is not included in the bill.
> "The Court: No, I think you got enough. Let's not add to the burden."

In its findings of fact and conclusions of law (R. 181-203), the trial court cited (R. 203) the same eight authorities urged by the respondent in his memorandum supporting the Motion for Summary Judgment (R. 154-157) and refuted by the petitioners in their memorandum opposing the summary judgment (R. 162-164).

Following the entry of Judgment for Plaintiff (R. 204), the petitioners filed a Motion to Amend Findings of Fact and Conclusions of Law (R. 204-205) and a Petition for Rehearing (R. 205-214). By Order (R. 214-215) filed February 2, 1968, the trial court denied both motions. Thereafter, ALPA filed the Notice of Appeal (R. 218-219) and obtained a supersedeas bond (R. 215-218).

The case thereafter was briefed and orally argued before the Court of Appeals for the Fifth Circuit. The Per Curiam opinion of the Court of Appeals is as follows:

> "This appeal involves the award of counsel fees *in the equity powers of the court.* The record and appertaining law amply sustain the award." (Emphasis ours.)

The Court of Appeals then denied a Petition for Rehearing and further denied a petition by the respondent for an additional award of $4,111.93 for counsel fees for the handling of the appeal.

REASONS FOR GRANTING THE WRIT

The award of attorneys' fees to the respondent in this case constitutes an anomaly in rationality. It so far departs from the accepted and usual course of judicial proceedings, and the decision by the Court of Appeals so far sanctions such a departure by the trial court, as to call for an exercise of this Court's power of supervision.

The amount of money here involved is not great and certainly will not provoke the raising of judicial eyebrows. However, the principle of this award might have come straight from Alice in Wonderland. The following points are illustrative:

1. The Per Curiam opinion of the Court of Appeals rejects any aspect of statutory or contractual right to counsel fees and bases the award solely upon the equity powers of the court.

2. The trial judge, in his findings and conclusions of law (AR. 203), specifically held that his equitable power to award attorneys' fees rested upon one or both of two grounds: (1) the benefitting of a group; or (2) the correction of abuses.

3. The trial judge further specifically stated (AR. 268) that "he [the attorney for respondent] certainly didn't win" and that the trial court was "not criticizing ALPA." How could it have been more clearly spelled out that the trial court found no benefit to a group by the respondent and no correction by the respondent of abuses?

4. The Court of Appeals clearly misapprehended the very words of the trial judge in applying the equitable power theory to this case.

5. If the statements above quoted by the trial judge are to be given any meaning whatsoever, the trial court here found that it had no equity power to award attorneys' fees in this case.

It is entirely correct that the trial court made a substantial number of findings of fact and conclusions of law. Many of these were assigned as error by the petitioners. Without debating, however, whether such findings and conclusions are or are not correct, there can be no dispute about two matters:

1. The award was based on the benefitting of a group and/or the correction of abuses (AR. 203).

2. The trial court did not rely upon a statute or a contract but rather acted upon what it construed to be its equitable jurisdiction. The basis for the award is as follows (R. 268-269):

> "I am going to award the amount that they asked. I am not criticizing ALPA, but I was impressed throughout this case that there was a dilemma that couldn't be solved by ALPA, and that the merging companies, apparently, were reluctant to solve the dilemma with any speed. And I do believe that the testimony of Mr. Tischler to the effect that the Mackey Group and perhaps the union, themselves, wanted the Court decision in the matter.

"It is true that the Court's decision is not what they hoped precisely wanted. That is, the Court referred it to the Arbitration Board and they didn't come out exactly as they hoped, but serving for the entirety, regardless of whether or not the intended gain was fully achieved or not. In other words, the lawyer is entitled to be paid even if he loses. He didn't lose in this case, but he certainly didn't win.

"So draw up your findings of fact and conclusions of law along that line and that's that."

In 20 Am.Jur.2nd 60 there appears the following general statement relative to the award of counsel fees in federal courts:

"In federal practice it is clear that the nominal fees that may be taxed and allowed to attorneys under the general statutory provision relating to docket fees are not meant to cover the compensation to which lawyers in charge of the litigation are reasonably entitled, and the discussion herein is not concerned with attorneys' docket fees.

"An award of attorneys' fees in the federal courts may, of course, be made by virtue of a contractual right thereto. Also, specific provision is made in the federal statutes for award of attorneys' fees in various types of cases. Some of these statutes are mandatory in terms, providing that attorneys' fees 'shall' be awarded to the party bringing suit, if he is successful; others

are discretionary in terms, providing that the court 'may' grant counsel fees to the prevailing party, whether the prevailing party is the plaintiff or the defendant. But except where a valid contractual provision, federal statute, or a contrary requirement of applicable state law dictates a contrary result, the general rule may be stated that the prevailing party in an action in federal court is not entitled to recover counsel fees.

"Under exceptional circumstances a federal court applying federal law will grant attorneys' fees even in the absence of contract or statute. The exceptional circumstances which warrant the granting of a counsel fee have not been formalized into particular rules, but allowances have been made in cases coming within the historic equity jurisdiction of the federal courts, as where a party at his own expense creates or preserves a fund in which others share, or where a party is guilty of fraudulent groundless, oppressive, or vexatious conduct. However, assuming the existence of jurisdiction in the federal equity courts to allow costs as between solicitor and client and to include therein attorneys' fees in excess of the amount prescribed by statute, the purpose to authorize such costs and to make such allowance should be clearly expressed in the decree. A decree merely allowing costs to be taxed does not mean that anything is to be included on account of counsel fees in addition to the amount specified in the statute as docket fees."

The most comprehensive annotation on the subject of award of counsel fees appears in 8 L.Ed.2d 894. The annotation reads in part as follows:

> "Subject to exceptions to be discussed in §§5-9, infra, the general rule is that absence of a contrary provision of statute, rule of court, or contract, or a contrary requirement of applicable state law, the prevailing party in an action in federa' court is not entitled to recover counsel fees. This rule applies not only in actions at law, such as in actions of debt, covenant, assumpsit, or trespass, and in suits for conversion or malicious prosecution, whether the relief sought is damages or a declaratory judgment, but also in ordinary equity actions."

While the last above cited annotation runs to some forty-seven pages, there is no contention here made that any of the exceptions therein noted to the general rule obtain in this case except as delineated in the eight authorities cited by the respondent and repeated by the trial court (R. 112, 113, 203). In effect, the respondent relies upon the "historic equity jurisdiction of the federal courts" (R. 112, 112) in the two areas aforementioned: (1) discriminatory and oppressive conduct or abuse by the defendants; and (2) the obtaining by the plaintiff of relief applying to a class of individuals. At risk of reiteration, it must be noted that there is no allegation of evidence as to (1) and a specific decision by the trial court adverse to (2) (R. 268). We reemphasize the following undisputed facts:

"The defendants in this case are Air Line Pilots Association, International, and Mackey Airlines, Inc., Master Executive Council No. 103, Air Line Pilots Association, International. The merger of Eastern Air Lines, Inc., and Mackey Airlines, Inc., has been consummated. There no longer exists as an identifiable entity Mackey Airlines, Inc., Master Executive Council No. 103, Air Line Pilots Association, International. The pilots formerly employed by Mackey and formerly constituting the Mackey MEC are now employees of Eastern Airlines, Inc. and are members of ALPA Councils at Eastern.

"The claim by the plaintiff for counsel fees is based upon a claim that the above-entitled cause benefited all of the members of the Mackey MEC and that the direct benefits to the plaintiff are or were incidental to the overall material gains which resulted to the general membership of the Mackey MEC (Approximately 30-35 individuals). The plaintiff recognizes that his suit was not a class suit and never claimed to be such. He does claim that although he did not sue for a class he obtained benefits for a class.

"The defendants filed herein the Affidavit of William G. Horlacher, the Chairman of the Mackey MEC from November 1, 1965, until June 1, 1967. The Horlacher Affidavit states that no benefits resulted to any individual except the plaintiff by reason of the institution and litigation of this cause. The testimony of the witness Laughlin and the plaintiff himself is to the same effect.

"On the one hand the plaintiff contends that by and through his suit he established his date of hire as March 9, 1952. This date is approximately five and one-half months prior to the original date of hire September 1, 1952, but some five and one-half years subsequent to the seniority date of October 1, 1946, the date contended for by the plaintiff. The Cole Arbitration Panel basically utilized the 'date of hire' concept in forming a merged seniority roster. In each individual case the Cole Panel substantially determined the place of such individual on the merged seniority roster by date of hire. The Horlacher Affidavit and the evidence clearly establishes that all members of the Mackey MEC had dates of hire subsequent to October 1, 1952, and thus were unaffected in the formulation of the merged seniority roster by the Cole Panel by reason of the advance of the plaintiff's date of hire from October 1, 1952 to March 9, 1952.

"The cases cited by the plaintiff in his Memorandum and relied upon by him to establish his right to counsel fees are in each instance based upon one or both of two circumstances: (1) the right to counsel fees where a plaintiff objects to discriminatory and oppressive conduct or abuse by a labor organization; and (2) the right to counsel fees where a plaintiff obtains relief applying to a class of individuals. The cases may be classified based on the quoted portions of opinions contained in the plaintiff's Memorandum as follows:

1. Rolax v. Atlantic Coastline Railroad Company CA 4 (1951) 186 F. 2d 473, 27 LRRM 2240-46. This case was a suit wherein the plaintiffs were seeking to correct "discriminatory and oppressive conduct by a powerful labor organization."

2. Fittipaldi v. Legassi, 239 N.Y.S. 2d 792, 53 LRRM 2175-80. This case sought to correct, "certain abuses in the keeping of the . . . list . . ." In this case the Court also held that the plaintiffs "materially benefited the general membership of the unions by pointing out and aiding to correct such abuses."

3. Sprague v. Ticonic National Bank, 307, U.S. 161, 167, 59 S. Ct. 77, 780. In this case the plaintiff alleged that "she had established as a matter of law the right to recovery in relation to 14 trusts in situations like her own."

4. Barron and Holtzoff, Volume 3, page 67. This comment relates to the situation where a party "substantially benefits others."

5. Gilbert v. Hoisting Engineers, Local 701, Ore. Sup. Ct. (1963) 384 p. 2d 136, 54 LRRM 2048-51. Here the litigation resulted in "correcting abuses" and the Court said "those members of the union in good faith seek to preserve the internal democracy of their union should not have to bear the expenses of a successful suit."

6. Milone v. English, CA DC, (1962) 50 LRRM 2773-76. In this case appellants "materially aided in the creation of a fund for the benefit of the International."

7. Murray et al. v. Kelly, 14 AD, 2d 528 Aff'd. 11 N.Y. 2d 810. Here the Court said "where, as a result of the litigation, benefits are obtained" to a class.

8. Cutler vs. American Federation of Musicians of the United States and Canada et al., DC SNY (1964) 56 LRRM 2787-90. This case was brought for the purpose of correcting "union abuse."

"It need only be pointed out that there is no claim made in the plaintiff's Complaint of union abuse or misconduct or discrimination on the part of the defendants. The sole representation was that the Mackey MEC merger committee improperly assigned an incorrect date of hire to the plaintiff. There is no showing of any kind that the plaintiff acted to correct any discrimination, abuse or misconduct on the part of the defendants with respect to the members of the Mackey MEC. Additionally, and as pointed out hereinabove, there is direct evidence that the plaintiff's action did not benefit any person including himself." (R. 159-164).

CONCLUSION

This case presents a unique situation. Rarely does any litigation consist of so much froth and so little substance. The record of this suit shows that the original purpose was accomplished easily, quickly and with a minimal amount of advocacy and judicial labor. Yet the matter has proceeded all the way to a petition for certiorari in the United States Supreme Court on a sole question of the award of counsel fees to the respondent.

It requires no more than a scanning of the record to demonstrate that the real and fundamental basis of this litigation was to get attorneys' fees. At the conclusion of the trial, after the trial court has awarded a fee of $4,301.-00, there occurred the following dialogue between counsel for the respondent and the trial court (R. 268-269):

> "Mr. Bruckner: May it please the Court, may we insert what we hope we can agree with Mr. Johnson will be a reasonable amount for today's services, which is not included in the bill.
> "The Court: No, I think you got enough. Let's not add to the burden."

Again after the Court of Appeals handed down its decision, counsel for the respondent petitioned for an *additional* fee of $4,111.93. The Court of Appeals denied this thrust, but it is only reasonable to assume that some such plea will soon be wending its way to this Court, either by counter petition, direct motion or otherwise.

The important legal consideration, however, here involved is the absolute and total contradiction in this case between the trial court's finding and conclusions (R. 181-203), the legal grounds relied upon (R. 203) and what the trial court stated at trial in open court (R. 268-269). There simply is no way this contradiction can be resolved to sustain an award of counsel fees under the equitable powers of the court. Yet the Court of Appeals specifically based its affirmance on the ground of equity power. Unless the record of this case is to be completely disregarded, the following conclusions are inescapable:

1. The trial court relied upon "historic equity jurisdiction" and not upon contract, statute or specified exceptions other than those appearing in the authorities cited on page 203 of the Record.

2. These exceptions are two in number: (1) success in obtaining benefits for a group; and (2) correction of abuse. The trial court recognized and found (R. 268) that the plaintiff did not succeed in obtaining benefits for a group. Secondly, nowhere in this record is there allegation or evidence of abusive action by the petitioners, there is no claim by the respondent in his Complaint or his testimony that he corrected any abusive or discriminatory misconduct by the petitioners, and the trial court made a specific finding to this effect. (R. 268).

3. In such case there simply does not exist any legal or moral reason or precedent for the exercise of the trial court's "historic equity jurisdiction" with respect to an award of attorneys' fees to the respondent.

Respectfully submitted

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APPENDIX

APPENDIX

FINDING OF FACT AND CONCLUSIONS OF LAW

(R-161)

(Style and Number Ommitted) (Filed Jan. 26, 1968)

This cause regularly came on to be heard on November 21, 1967, pursuant to Complaint filed by plaintiff, and the stipulation of the parties. Plaintiff sought to restrain defendants from discriminating against plaintiff by failure to represent plaintiff fairly in accordance with their statutory duty to do so, under the Railway Labor Act, 48 Stat. 1185, er U.S.C., Sec. 151 et seq., as amended. The parties eventually stipulated to substantially all of the allegations of the complaint. Pursuant to due notice a hearing was held before this Court, at which time the parties appeared, represented by counsel, and all parties have been heard, and the Court being fully advised in the premises, and pursuant to the stipulations of the parties hereby makes and enters, pursuant to Rule 52 of the Federal Rules of Civil Procedure, its Findings of Fact and Conclusions of Law as follows: (R-162)

FINDINGS OF FACTS

1. Plaintiff filed a complaint asking for a temporary injunction, after notice, pending full hearing, and in effect, it states the plaintiff is a pilot of Mackey Airlines Inc. (herein Mackey) and has been since October 1, 1946. The Mackey pilots at the time of filing were and have been represented by the Airline Pilots Association, International (herein ALPA) Master Executive Council #103 (herein Mackey MEC), although plaintiff is not a member thereof.

Mackey merged with Eastern Air Lines, Inc. (herein Eastern) on January 8, 1967, with Eastern the surviving carrier. In anticipation of the merger ,the Mackey MEC certified to ALPA Master Executive Council #108 (herein Eastern MEC), the bargaining representative of the Eastern pilots, a seniority list purporting to verify plaintiff's length of service, but upon which plaintiff's date of hire and seniority date were given as September 1, 1952. Plaintiff timely protested the erroneous 1952 date and presented evidence to the Mackey MEC including evidence requested by the Mackey MEC. Nevertheless the Mackey MEC declined to correct the error and to consider the evidence requested, and merger negotiations continued, at least up to the time of filing, using an erroneous 1952 seniority date relating to plaintiff as the basis thereof. Plaintiff requested a hearing and an opportunity to meet the issues, but this was denied. Plaintiff contends that in so acting, ALPA and the Mackey MEC were unlawfully discriminating against him in violation of their statutory duty of fair representation.

2. Jurisdiction of this Court is invoked inasmuch as the action arises under the Railway Labor Act, 48 Stat. 1185, 45 U.S.C., Sec. 151 et seq., as amended, (herein called the Act) as hereinafter more fully appears, and under the Fifth Amendment to the Constitution of the United States.

(R-163)

3. Mackey was incorporated under the laws of the State of Florida on September 30, 1946, under the name Mackey Air Transport, Inc. On or about May 6, 1953, the Civil Aeronautics Board (herein the C.A.B.), an agency of the United States Government, approved and authorized the additional use by Mackey of the name Mackey Airlines.

4. Eastern and Mackey were, and Eastern is, air carriers engaged in commerce within the meaning of the Act, and are subject to the provisions of the Act.

5. ALPA and the Mackey MEC are labor organizations and voluntary unincorporated associations within the meaning of the Act and at all times material were and are subject to the provisions of the Act.

6. At all times material herein, ALPA has been the duly designated, exclusive, collective bargaining representative of the pilot employees of Mackey, including plaintiff, pursuant to the Act, acting through the Mackey MEC, since on or about 1955.

7. The unlawful acts charged were, and if allowed to continue, would have been committed in and around Fort Lauderdale, Florida, within this judicial district.

8. Plaintiff since his employment by Mackey has been a minority member of a craft exclusively represented for purposes of collective bargaining by ALPA and Mackey MEC, and as such, is deprived by the Act of any right to choose a collective bargaining representative of his own, and plaintiff cannot bargain individually on behalf of himself as to matters which are properly the subject of collective bargaining, which matters include in part the subject matter of this complaint, the bargaining rights thereto being vested exclusively in ALPA and Mackey MEC.

9. At all times material herein, including from on or about 1955 to the time of filing, the Maching pilots were subject to, and were employed under the terms and conditions of, collective bargaining agreements entered into between Mackey and ALPA.

(R-164)

10. Plaintiff was hired by Mackey as a pilot on October 1, 1946, and thereafter was made Chief Pilot.

11. From on or about October 1, 1946, up to and including the time of filing, and as substantiated by Mackey payroll records and other records, plaintiff has continously and without furlough time been employed by Mackey as a pilot and/or for the purpose of eventually performing the duties of a pilot, and in any period therein when not actually physically engaged in the duties of flying airplanes for Mackey directly as a pilot, remained in the employ of Mackey and was compensated therefor by Mackey, for the purpose of performing and eventually performing the duties of a pilot for Mackey.

12. On or about January, 1946, in anticipation of the formation of Mackey, three aircraft were purchased from the United States government and modifications begun thereon for eventual use in civilian air transportation by Mackey.

13. On or about December 27, 1946, plaintiff began flying regularly scheduled airline trips as a pilot for Mackey and continued such flights until on or about April 19, 1947, upon which date regularly scheduled flying trips by Mackey ceased as a result of an order of the Civil Aeronautics Board (herein CAB) an agency of the United States Government.

14. From on or about April 19, 1947, to on or about July 16, 1947, plaintiff flew non-scheduled airline trips as a pilot for Mackey, at which latter date Mackey began storage of its aircraft for future use while awaiting the issuance of a Certificate of Public Convenience and Necessity from the CAB.

15. On or about April 24, 1952, the CAB issued to Mackey a Certificate of Public Convenience and Necessity, to be effective on or about August 5, 1952, and shortly thereafter Mackey resumed its flight operations with plaintiff physically engaged in performing services as a pilot for Mackey.

(R-165)

16. In the interim period between July 16, 1947, and August 5, 1952, plaintiff remained in the employ of, and received compensation from, and performed services for, Mackey, all with the purpose of eventually resuming and again performing the duties of a pilot for Mackey, upon the aforesaid granting of a Certificate of Convenience and Necessity by the CAB.

17. On or about 1955, the first collective bargaining agreement between ALPA and the Mackey MEC and Mackey was entered into and became effective. Thereafter and continuously up to the time of filing said collective bargaining agreement, as amended, has continuously been in force. Pursuant thereto, semi-annually the parties issued and posted pilot seniority lists placing plaintiff in the No. 1 pilot position, and without exception listing his date of hire as October 1, 1946.

18. Plaintiff is in fact entitled to a seniority date and date of hire of October 1, 1946.

19. On or about October 22, 1965, ALPA requested Mackey to affirm and post a "Seniority List of Mackey Airlines Flight Crew Members," which again placed plaintiff in position number 1 with a date of hire of October 1, 1946.

20. On or about November 1965 the aforesaid Seniority List of Mackey Airline Flight Crew Members was posted by Mackey and has been republished by Mackey, with the concurrence of ALPA and the Mackey MEC, on January 1, 1966, July 1, 1966, and January 1, 1967, and has at all times since its initial posting been used as a pilot seniority list.

21. On or about November 30, 1966, Plaintiff received from the Mackey MEC, acting through its merger committee, a letter advising plaintiff that the said merger committee had certified his date of hire and seniority date as being September 1, 1952, and contemporaneously stated that should plaintiff desire to protest said assignment of date, plaintiff should do so by written statement of fact and relevant evidence within thirty days, and also stated:

> "The computation of such length of service shall be based solely on the date a flight deck operating crew member was hired for the purpose of eventually performing the duties of a pilot, as substantiated by company payroll records and other records."

22. On or about December 5, 1966, and on or about December 23, 1966, plaintiff made a timely challenge, and protested by written statement of fact, submitting relevant evidence, to the said merger committee, the erroneous assignment of September 1, 1952, as his seniority date and date of hire.

23. Shortly thereafter, plaintiff invited the said merger committee to examine Mackey payroll records and other records, and on or about January 6, 1967, the said merger committee did so examine the aforesaid records. At that time, the said merger committee requested plaintiff to

elicit and submit to the merger committee a statement concerning plaintiff's continuous employment beginning October 1, 1946, from Colonel Joseph C. Mackey, President of Mackey.

24. Plaintiff, in response to the said request of the merger committee, promptly elicited the said statement from Colonel Mackey and forwarded the said statement to the merger committee promptly, on or about January 6, 1967.

25. Despite the foregoing, and without waiting for or considering the said requested statement of Colonel Mackey, the merger committee, on or about January 9, 1967, without a hearing and without in any manner presenting to plaintiff the basis for its action, and without affording plaintiff any opportunity to be heard concerning the basis for its action, summarily denied plaintiff's protest.

26. On or about January 18, 1967, plaintiff made a timely protest to the Mackey MEC through the said negotiating committee, protesting the aforesaid denial of plaintiff's protest, and requested the merger committee to explain the bases of its action, demanded a hearing, and moved the committee to reconsider its action. As of the time of filing complaint, the said protest had gone ignored. (R-167)

27. Since on or about December, 1966, the Mackey MEC periodically met and conferred with the Eastern MEC for the purposes of merging the respective pilot and flight engineer seniority lists (called Flight Deck Crew Member Seniority Lists) of Mackey and Eastern into a single combined seniority list for purposes of implementing the merger between Mackey and Eastern.

28. For the purposes set forth above, the Mackey MEC at all times at least prior to March 21, 1967, used as a basis of its position in the meeting and conferences with the Eastern MEC a seniority list erroneously listing plaintiff's date of hire and seniority date as being September 1, 1952, rather than October 1, 1946.

29. On or about January 8, 1967, the merger between Mackey and Eastern was accomplished.

30. Since on or about January 8, 1967, Eastern has been a successor to Mackey, is operating the air routes of Mackey, has succeeded Mackey as party to the collective bargaining agreement with ALPA covering the pilots' terms and conditions of employment, and is presently administering said agreement.

31. Following the merger of Mackey with Eastern, resulting with Eastern being the surviving corporation, Eastern, following due investigation of the pertinent books and records of Mackey, awarded to plaintiff a 20-year service commencing with his date of employment, namely, October 1, 1946.

32. The aforesaid conferences and meetings between the Eastern MEC and the Mackey MEC would have resulted in the immediate future, following the filing of the complaint, of a submission by the said MEC's to arbitration, the matter of producing a said single, combined, seniority list for purposes of implementing the said merger, and the Mackey MEC had at the time of the filing of the complaint, already caused to be issued for a mediator a seniority list, to be used as the basis for the said arbitration, which erroneously lists plaintiff's seniority date and date of hire as September 1, 1952.

33. Unlike the majority of Mackey pilots, concerning whom no change in seniority date or date of hire has been made, plaintiff is not and has not been a member of ALPA or the Mackey MEC.

34. Plaintiff has no available administrative remedy, except that of this court, for the unlawful and improper acts and conduct alleged as the subject matter of this complaint.

35. Plaintiff has been denied the right to be represented by ALPA or Mackey MEC in this matter.

36. By reason of the foregoing acts and conduct, plaintiff suffered and continued to suffer, and would have continued to suffer, unless the foregoing acts and conduct were restrained, immediate and irreparable injury, loss and damage would result.

37. The said immediate and irreparable injury, loss and damage would have resulted in plaintiff's detriment, because possible bidding for flights, promotions, advancements in rating, retirement, and similar matters, and therefore, increases in pay, also the foregoing and similar benefits, particularly retirement benefits, are all contingent upon and dependent upon the plaintiff's seniority date and date of hire with Mackey, in the aforesaid Mackey-Eastern merger. In addition, plaintiff's damage could have increased and been greater, and been made more irreparable, inasmuch as upon the merging of the Eastern and Mackey seniority list, the lower position of plaintiff on the present Mackey list could have been multiplied and made approximately one hundred times worse, in the merged list, inasmuch as Eastern employed and has listed on its pilot seniority list approximately one hundred times the number of pilots which Mackey employed and had listed on its pilot seniority list.

In addition to the foregoing stipulated facts, I make the following findings of facts (some of which are also stipulated to among the parties) :
(R-169)

38. On January 17, 1967, plaintiff retained the law firm of Bruckner & Greene to represent him in his dispute with defendants.

39. During the period around January, 1967, and immediately thereafter, plaintiff had several conversations with defendants' agents Preble, Kutzie and Horlacher concerning the imminence of the merger between Mackey and Eastern. During this period of time, Captain Preble was Chairman of the Merger Committee, Kutzler was a member of the Committee, and Horlacher was Chairman of the Mackey MEC.

40. On January 7, 1966, in one such discussion, Captain Horlacher agreed that the 1952 date of hire initially assigned to plaintiff by the Merger Committee should be changed to reflect the 1946 date of hire. However, Horlacher stated that before doing so, he wanted to contact defendant ALPA's headquarters in Chicago. Later that day, Horlacher advised Tischler that they should not make the change until going through a "court case" so that there was a court decision to protect the rights of the parties in the future. Plaintiff pointed out to Horlacher that this would be an expensive procedure, that the Merger Committee could simply change the date themselves, and that if plaintiff were required to go through the procedure of a court action he would request that court costs and attorneys' fees be paid by ALPA. Horlacher agreed that this was "all right," that it was fair enough, and it was a value to defendants.

41. Thereafter, during his various conversations with Preble, Kutzle and Horlacher, plaintiff pointed out to them that in the forthcoming merger, there would have to be a starting point from which to merge the Eastern and Mackey pilot lists, that if plaintiff's date of hire of 1946 was "secure," that this date could become the starting point for merging the two lists; however, if plaintiff's date were 1952, then this later date would no doubt be the starting point, and it was accordingly to the Mackey MEC's advan-

(R-170)

tage to secure the 1946 date for plaintiff. The three Mackey MEC agents agreed with plaintiff's rationale, but stated that they would be more secure if they had a "Court action" to solidify this date.

42. As a result of the aforesaid conversations, plaintiff instituted this action with the filing of the complaint herein on February 14, 1967.

43. On February 17, a hearing was held on plaintiff's request for preliminary injunction and this Court ordered that the issue of plaintiff's proper length of service be remanded to the Mackey MEC, and ordered that the Mackey MEC reconsider and review all proper and relevant evidence bearing upon the issue, and that the decision so reached should supersede defendant Mackey MEC's prior decision.

44. On March 13, 1967, pursuant to the Order of this Court, the Mackey MEC through its reconvened Merger Committee, or Merger Board, consisting of members Averman, Laughlin and Ferrer, (each of whom was thus the agent of defendants), met at the offices of plaintiff's attorneys. The meeting was held in the attorneys' offices, because Captain Horlacher stated that he wanted to be

sure that the results of the Merger Committee's actions were properly "written up" and properly presented back to the Court, in their actions. Accordingly, Captain Horlacher asked plaintiff if he would have plaintiff's attorney write up the forthcoming decision and present it to the Court "in the proper form," and he stated that the Mackey MEC would pay the attorneys for these services.

45. During the course of the reconvened hearing, Captain Averman, acting as Chairman of the Committee, also asked plaintiff's law firm to draw up proper papers, stating that the Committee would pay for it. Plaintiff's attorneys did draw up the Order reflecting the revised decision (R-171) of the Committee and included the cost therein in the overall charge for legal services rendered to plaintiff.

46. Plaintiff accepted and agreed with the foregoing March 13th order of the Mackey MEC, and on March 21, this Court entered its Order approving and adopting the agreement of the parties that plaintiff was hired by Mackey on or about October 1, 1946, for the purpose of eventually performing the duties of a pilot.

47. Thereafter, on April 12, plaintiff amended the Complaint to allege damages, and added to plaintiff's prayers for relief requests that the Court award plaintiff the cost of the action, including reasonable attorney's fees.

48. On March 8, and April 6, 7, 10, 1967, hearings were held before an arbitration board for the purpose of arbitrating the merger of the flight crew member seniority lists of Eastern & Mackey. The Eastern MEC & Mackey MEC representing the respective employees of their respective employers were the parties to that arbitration hearing.

49. As is shown by the Mackey MEC's newsletter of April 20, 1967, the Mackey MEC took the position during the overall arbitration concerning the merger of the Eastern and Mackey seniority list, that the Mackey pilots should be "rationed in" starting with plaintiff's position as being number 432, whereas the Eastern MEC took the position that the starting position for the merger should be plaintiff's position, which should in turn be number 1878.

50. As is shown by the "merger information" leaflet distributed by the Mackey MEC prior to the arbitration, the Mackey MEC contended at the merger hearing that the most desirable method of merging would be that method used in a prior merger, the "P.A.A.-A.O.A." merger, I.E., one involving a system of merger other than straight date of hire, this straight "date of hire" contention having been specifically rejected in that merger, and instead factors such as length of service, maintenance of status, equitable sharing of gains or losses resulting from consolidation, etc. ought to be used.

51. In fact, as the Award and "Opinion" of the Arbitration Board shows, it used a method of merger giving primary importance to date of hire. However, in so doing, the Board found that plaintiff was hired October 1, 1946, and by giving him credit for length of time he was actually flying in the employ of Mackey, adjusted his length of service so as to begin it, for purposes of the merger, 5 months and 22 days prior to September 1, 1952, thereby making his cumulative length of service date March 9, 1952. In so doing, the Board rejected the contention of Eastern MEC that Plaintiff's length of service date should be November 24, 1952. Thus, to that extent, the improved date of hire which plaintiff obtained by virtue of this

court action was carried over into the merger arbitration decision. This is shown by the pilot system seniority list published by Eastern revised July 1, 1967, it.e. the first combined seniority list published since the merger. Plaintiff at that time was placed in seniority position number 883.

52. If the Mackey MEC had been entirely successful in its contentions before the arbitration board, as is shown by the exhibit entitled "Proposed Merger Position of the Mackey Pilots," plaintiff's position number 432 would have placed him in the midst of a group of Eastern pilots whose seniority dates distributed among various dates in 1945 and 1946. In a like manner, the pilot occupying the number 2 position on the Mackey seniority list, E.E. Laughlin, would have been placed amongst a group of Eastern pilots whose dates of hire were also in 1946 as would Mackey pilot Brannian and Averman. Laughlin, Brannian and Averman, however, had cumulative length of service dates of 1953 (Laughlin and Brannian) and 1955 (Averman), respectively. Thus, the position advanced by the Mackey MEC at the arbitration hearing, and which turned upon a 1946 date of hire for plaintiff, was designed to inure to the substantial benefit of other Mackey MEC members.

Accordingly, it is clear that Mackey MEC in the overall merger, urged upon the arbitration board a position which was strengthened, or would have been strengthened, by plaintiff's date of hire being found to be 1946, rather than the September 1, 1952, date which the Mackey MEC originally assigned to him.

53. Plaintiff's attorneys performed legal services on behalf of plaintiff, in connection with this action, between January 17, 1967 and November 20, 1967. In connection therewith, plaintiff has submitted to defendant bills for legal services rendered in connection with this action of an amount totaling $2,168 as of March 20, 1967. Defendants agree that said services were rendered and the amount charged therefor is not unreasonable. No part of those bills has been paid by defendants. From March 20, up to, and not including, the date of this trial in the matter, November 21, 1967, plaintiff's attorneys rendered legal services billed for in an amount totaling $2,133. These services were rendered and the amount charged therefor was at the same rate charged for the prior services, which defendant stipulated was reasonable. Accordingly, I find the entire amount of the bill for legal services rendered, totaling $4,301, is not an unreasonable amount, and that no part of said bill has been paid.

CONCLUSIONS OF LAW

The conclusions in paragraphs 2, 3, 4 and 5 are stipulated to by the parties.

1. This Court has jurisdiction of the parties and the subject matter of this action.

2. Defendant Mackey MEC and Defendant ALPA are one and the same legal entity.

3. At the time of the filing of the complaint, it could have been fairly anticipated that, unless enjoined, defendants would have continued and repeated the acts and con-

duct set forth above, or similar or like acts and conduct in violation of the Act. It would have been therefore just and proper that, pending final disposition of the matters involved herein by the Court, defendants be enjoined and restrained from the commission of the acts and conduct above alleged, and similar action and conduct, or repetition thereof, or any acts which make use of the fruits of the above unlawful acts and conduct.

4. By the acts and conduct set forth above, defendants failed to represent plaintiff without hostile discrimination, fairly, impartially and in good faith; and unlawfully and improperly discriminated against plaintiff based on irrelevant and invidious factors, and thereby acted toward plaintiff willfully and maliciously, thereby violating the right granted to plaintiff under the Act to fair representation, and thereby violating the right not to have property rights taken away without due process, as guaranteed by the Fifth Amendment to the Constitution of the United States.

5. At all times material, William G. Horlacher, Robert W. Preble, James P. Kutzle, Allen E. Gramza, Esq., Richard Watt, Esq., and Charles H. Ruby were agents of defendants.

6. Defendants, by and through the action of their agents, made it necessary for plaintiff to engage counsel and bring this action in order to protect his interests. Defendants, however, by virtue of their being plaintiff's bargaining agent, were required to protect plaintiff's interest fairly and without discrimination. Defendants failed to do so short of requiring plaintiff to engage counsel and bring this court action to vindicate his rights. Indeed, de-

fendants actively encouraged the bringing of this action, with full knowledge that there would be attendant legal fees and expenses.

7. Additionally, by virtue of plaintiff's bringing this action successfully, a benefit inured to defendants by virtue of their being able to use the corrected date of hire of plaintiff in advancing the Mackey MEC's position in the arbitration hearings relating to the merger of the Eastern and Mackey seniority lists. This was the precise benefit which defendant sought to receive and which they did make use of in the said arbitration hearings. It is irrelevant that the Mackey MEC was relatively successful or unsuccessful in the final outcome of the arbitration; what is significant is that they enjoyed the benefit of being able to advance a position which they wished to be able to advance.

8. In situations such as this, wherein a member of a bargaining unit is pitted against a labor organization in an attempt to correct abuses, the allowances of attorneys' fees as part of the costs is a matter resting in the sound discretion of the trial judge. This development is in full keeping with the historic equity jurisdiction of the Federal Courts. Accordingly, I hold that plaintiffs are entitled to recovery of costs in this action, including attorneys' fees in the reasonable amount of $4,301.

(Sprague v. Ticonic National Bank 307 U.S. 161, 167, 59 S. Ct. 777, 780; Rolax v. Atlantic Coastline Railroad Company, CA 4 (1951) 186 F.2d 473, 27 LRRM 2240-46, and cases cited therein; Fittipaldi v. Legassi, 239 N.Y.S. 2d 792, 53 LRRM 2176, 80; 3 Baron and Holtzoff, 67, (Citing Sprague); Gilbert v. Hoisting Engineers, Local 701, Ore. Sup. Ct. (1963) 384 P.2d 136, 54 LRRM 2048,

51; Murray et al v. Kelly, 14 AD. 2d 528, Aff'd 11 N.Y. 2d 810; Cutler v. American Federation of Musicians of the United States and Canada, et ai, DC SYN (1964) 56 LRRM 2787-90; Milone v. English, CA DC (1962) 50 LRRM 2773, 676).

Judgment will be entered accordingly.

|s| EMETT C. CHOATE
United States District Judge

JUDGMENT FOR PLAINTIFF

(R-177)

(Styled and Number Omitted) (Filed Feb. 2, 1968)

The Court having filed its Findings of Fact and Conclusions of Law in this cause, in pursuance thereof, it is considered by the Court that the plaintiff above named do have and recover of and from the defendants above named the principal sum of $4,301., with interest thereon from the date hereof, until paid, at the rate of 6% per annum, said sum being for plaintiff's attorneys' fees, together with all the other costs of the proceeding, to be taxed by the Clerk, to be levied on the lands, tenements, goods and chattels of the defendants and to the plaintiff rendered, and that execution issue therefor.

DONE AND ORDERED at Miami, Florida, this the 2nd day of February, 1968.

|s| EMETT C. CHOATE
United States District Judge.

ORDER

(Styled and Number Omitted) (Filed Feb. 2, 1968)

THIS CAUSE came on to be heard before me this day upon the defendants' Motion to Amend Findings of Fact and Conclusions of Law and the Court having considered the same, it is,

ORDERED as follows:

1. The Petition for Rehearing is hereby denied.

2. The Motion to Amend Findings of Fact and Conclusion of Law is hereby denied.

DATED at Miami, Florida, this 2nd day of February, 1968.

|s| EMETT C. CHOATE
Senior United States Judge

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 26024

AIR LINE PILOTS ASSOCIATION, ET AL,
Appellants,

versus

ROBERT C. TISCHLER,
Appellee.

Appeal from the United States District Court for the Southern District of Florida

---

(October 28, 1968)

Before BELL and MORGAN, Circuit Judges and GUINN, District Judge

PER CURIAM: This appeal involves the award of counsel fees in the equity powers of the court. The record and appertaining law amply sustain the award.

AFFIRMED.

[255] — Bell

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 26,024

AIR LINE PILOTS ASSOCIATION, ET AL,
Appellants,

versus

ROBERT C. TISCHLER,
Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(November 22, 1968)

(On Petition for Rehearing)
Before BELL and MORGAN, Circuit Judges
and GUINN, District Judge.

PER CURIAM: It is ORDERED that the petition for rehearing in the above entitled and number cause be, and the same is, hereby

DENIED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 26024

AIR LINE PILOTS ASSOCIATION, ET AL,
Appellants,

versus

ROBERT C. TISCHLER,
Appellee.

Appeal from the United States District Court for the Southern District of Florida

---

Before BELL and MORGAN, Circuit Judges, and GUINN, District Judge.

BY THE COURT:

The motion filed by appellee for an additional allowance of the sum of $4,111.93 as attorneys' fees in connection with the handling of the appeal in the captioned cause is hereby Denied.

(ORIGINAL FILED DECEMBER 5, 1968)

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1968

No. 26024

D. C. Docket No. CA 67-147 EC

AIR LINE PILOTS ASSOCIATION, ET AL.,
Appellants,

versus

ROBERT C. TISCHLER,
Appellee.

Appeal from the United States District Court for the Southern District of Florida

---

Before BELL and MORGAN, Circuit Judges and GUINN, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellants, Air Line Pilots Association, and others, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

October 28, 1968

Issued as Mandate: Dec 11 1968